UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3514

omelko

Mailed: June 14, 2004

Cancellation No. 92042614

Jackson/Charvel Manufacturing, Inc.

v.

Prins, Lloyd A.

Before Hanak, Hairston and Bucher,
Administrative Trademark Judges.

By the Board:

Respondent's answer was due on December 21, 2003. On February 24, 2004, the Board issued a notice of default to respondent because no answer had been filed. The Board subsequently associated petitioner's motion for default judgment, filed February 2, 2004, with the proceeding file. Petitioner's motion does not show proof of service of same on respondent, as required by Trademark Rule 2.119, and will be given no consideration.[1]

On March 22, 2004, respondent filed a motion to extend his time to answer and requested that the Board set aside the notice of default and reset dates. This motion did not

[1] The Board may allow time for a party to serve a motion that the party failed to serve. However, in this case the Board issued a notice of default, which is an alternative for a motion for default judgment and, as such, a decision on petitioner's motion would be duplicative.

include proof of service of same on petitioner, however, petitioner has responded thereto.[2] As explanation for his failure to answer the petition to cancel, respondent states that although the Board had the correct mailing address for respondent, respondent did not receive the institution order. Respondent further states that he first learned of the petition to cancel in early February 2004, through the USPTO website. On February 12, 2004, respondent wrote a letter to the Commissioner of Trademarks requesting a copy of the petition to cancel. This letter has now been associated with this file. Respondent filed its answer on May 17, 2004.

On March 31, 2004, petitioner filed a response to respondent's motion for an extension of time to answer, in which it argues that respondent has not shown good cause because he attached no evidence and the motion relied only on conclusory denials of receipt. Petitioner concludes that respondent has not shown good cause why a timely answer was not filed and, as such, judgment by default should be entered.

The standard to apply in order to permit the late filing of an answer is the "good cause" standard of Fed. R. Civ. P. 55(c). We find that the respondent's apparent

[2] The parties are expected to fully comply with Trademark Rule 2.119 for all future filings.

failure to receive a copy of the petition to cancel constitutes good cause not to enter judgment by default. *See, e.g., Perfect Film and Chemical Corporation v. The Society Ordinastral, 172 USPQ 696* (TTAB 1972). Accordingly, the notice of default is hereby set aside; and respondent's motion to extend his time is granted; and respondent's answer is noted.

Discovery is open and the trial dates, including the close of discovery, are reset as indicated below.

Discovery period to close:	November 1, 2004
30-day testimony period for party in position of plaintiff to close:	January 30, 2005
30-day testimony period for party in position of defendant to close:	March 31, 2005
15-day rebuttal testimony period for plaintiff to close:	May 15, 2005

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within 30 days after completion of the taking of testimony. See Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

It is noted that respondent may intend to represent himself in this proceeding. While Patent and Trademark Rule l0.l4 permits any person to represent himself, it is

generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

In addition, as stated above, Trademark Rule 2.ll9(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which respondent may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.

It is recommended that respondent become familiar with the law, regulations and Trademark Trial and Appeal Board Manual of Procedure (TBMP) which are available at www.uspto.gov.

Strict compliance with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure,

is expected of all parties before the Board, whether or not they are represented by counsel.